



Mission Support Alliance Provision

**SPECIAL PROVISIONS - SUBCONTRACTING PLAN**  
**SP-11 REV. 0 August 24, 2009**

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### 1.0 PREAMBLE

This Special Provision is applicable in its entirety unless specifically deleted or amended in the Contract and is in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between this Special Provision and the General Provisions, this Special Provision shall take precedence.

NOTE: References to the FAR clauses are included herein as a source and description of these requirements. FAR Language should be read to identify this contract between Mission Support Alliance (Buyer) and the Mission Support Alliance contractor. Specifically, when used in these references:

- ❑ Contracting Officer shall refer to the Mission Support Alliance Contract Specialist.
- ❑ SBA ProNet has been replaced by the Central Contractor Registry. [www.ccr.gov](http://www.ccr.gov)
- ❑ SF-294 and SF-295 forms have been replaced by electronic submittals into the SBA Electronic Subcontracting Reporting System (ESRS) <http://www.esrs.gov>

### 2.0 REQUIREMENTS

- A. This Special Provision applies when invoked by the contract, if the value of any single contract action is greater than \$500,000 or greater than \$1,000,000 if the work is for construction of any public facility, unless the contractor is granted an exemption by the Buyer for a reason allowed by FAR 19.702.
- B. Contractor shall utilize small business concerns to the maximum extent practical as required in FAR part 19.702 and FAR 52.219-8 when subcontracting any part of this contract.
- C. Contractor must prepare, submit for approval and implement a subcontracting plan which meets the intent and requirements of FAR 19.704 and FAR 52.219-9.
- D. Contractor must register in the government's Central Contractor Registration database and keep the information in the database current throughout the term of this contract. [www.ccr.gov](http://www.ccr.gov)
- E. Contractor must register in the SBA Electronic Subcontract Reporting System (ESRS) [www.esrs.gov](http://www.esrs.gov) within 30 days after award of a contract.
- F. An Individual Subcontracting Report (ISR) must be filed in the ESRS on a semi-annual basis as required by FAR 52.219-9 for periods ending March 31 and September 30. A Summary Subcontracting Report (SSR) for the entire year must be filed in ESRS for the period ending September 30. The reports must be filed within 30 days of the end of the period, regardless if any subcontracting activity



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took place during the period, and for the duration of the contract until a final report is submitted.

- G. These requirements must be flowed down to lower tier contractors with contracts which meet the requirements of FAR 19.702

### **3.0 FEDERAL ACQUISITION CLAUSES - 52.219-8 UTILIZATION OF SMALL BUSINESS CONCERNS (MAY 2004)**

- A. It is the policy of the United States that small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns shall have the maximum practicable opportunity to participate in performing contracts let by any Federal agency, including contracts and subcontracts for subsystems, assemblies, components, and related services for major systems. It is further the policy of the United States that its prime contractors establish procedures to ensure the timely payment of amounts due pursuant to the terms of their subcontracts with small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, and women-owned small business concerns.
- B. The Contractor hereby agrees to carry out this policy in the awarding of subcontracts to the fullest extent consistent with efficient contract performance. The Contractor further agrees to cooperate in any studies or surveys as may be conducted by the United States Small Business Administration or the awarding agency of the United States as may be necessary to determine the extent of the Contractor's compliance with this clause.
- C. DEFINITIONS (As used in this contract)
  - 1. "HUBZone small business concern" means a small business concern that appears on the List of Qualified HUBZone Small Business Concerns maintained by the Small Business Administration.
  - 2. "Service-disabled veteran-owned small business concern" means a small business concern— Not less than 51 percent of which is owned by one or more service-disabled veterans or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more service-disabled veterans; and The management and daily business operations of which are controlled by one or more service-disabled veterans or, in the case of a service-disabled veteran with permanent and severe disability, the spouse or permanent caregiver of such veteran
  - 3. "Service-disabled veteran" means a veteran, as defined in 38 U.S.C. 101(2), with a disability that is service-connected, as defined in 38 U.S.C. 101(16).



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4. “Small business concern” means a small business as defined pursuant to Section 3 of the Small Business Act and relevant regulations promulgated pursuant thereto.
5. “Small disadvantaged business concern” means a small business concern that represents, as part of its offer that:
  - a. It has received certification as a small disadvantaged business concern consistent with 13 CFR Part 124, Subpart B;
  - b. No material change in disadvantaged ownership and control has occurred since its certification;
  - c. Where the concern is owned by one or more individuals, the net worth of each individual upon whom the certification is based does not exceed \$750,000 after taking into account the applicable exclusions set forth at 13 CFR 124.104(c)(2); and
  - d. It is identified, on the date of its representation, as a certified small disadvantaged business in the database maintained by the Small Business Administration (PRO-Net).
6. “Veteran-owned small business concern” means a small business concern:
  - a. Not less than 51 percent of which is owned by one or more veterans (as defined at 38 U.S.C. 101(2)) or, in the case of any publicly owned business, not less than 51 percent of the stock of which is owned by one or more veterans; and
  - b. The management and daily business operations of which are controlled by one or more veterans.
7. “Women-owned small business concern” means a small business concern:
  - a. That is at least 51 percent owned by one or more women, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more women; and
  - b. Whose management and daily business operations are controlled by one or more women.
  - c. Contractors acting in good faith may rely on written representations by their subcontractors regarding their status as a small business concern, a veteran-owned small business concern, a service-disabled veteran-owned small business concern, a HUBZone small business concern, a small disadvantaged business concern, or a women-owned small business concern.



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### **SMALL BUSINESS SUBCONTRACTING PLAN (Apr 2008)**

This clause does not apply to small business concerns.

*Definitions.* As used in this clause—

“Alaska Native Corporation (ANC)” means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*) and which is considered a minority and economically disadvantaged concern under the criteria at 43 U.S.C. 1626(e)(1). This definition also includes ANC direct and indirect subsidiary corporations, joint ventures, and partnerships that meet the requirements of 43 U.S.C. 1626(e)(2).

“Commercial item” means a product or service that satisfies the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

“Commercial plan” means a subcontracting plan (including goals) that covers the offeror’s fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (*e.g.*, division, plant, or product line).

“Electronic Subcontracting Reporting System (eSRS)” means the Government wide, electronic, web-based system for small business subcontracting program reporting. The eSRS is located at <http://www.esrs.gov>.

“Indian tribe” means any Indian tribe, band, group, pueblo, or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act (43 U.S.C.A. 1601 *et seq.*), that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs in accordance with 25 U.S.C. 1452(c). This definition also includes Indian-owned economic enterprises that meet the requirements of 25 U.S.C. 1452(e).

“Individual contract plan” means a subcontracting plan that covers the entire contract period (including option periods), applies to a specific contract, and has goals that are based on the offeror’s planned subcontracting in support of the specific contract except that indirect costs incurred for common or joint purposes may be allocated on a prorated basis to the contract.

“Master plan” means a subcontracting plan that contains all the required elements of an individual contract plan, except goals, and may be incorporated into individual contract plans, provided the master plan has been approved.

“Subcontract” means any agreement (other than one involving an employer-employee relationship) entered into by a Federal Government prime Contractor or subcontractor calling for supplies or services required for performance of the contract or subcontract.

The offeror, upon request by the Contracting Officer, shall submit and negotiate a subcontracting plan, where applicable, that separately addresses subcontracting with small business concerns, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business concerns, small disadvantaged business, and with women-owned small business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled



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veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate the subcontracting plan shall make the offeror ineligible for award of a contract.

The offerors subcontracting plan shall include the following:

- A. Goals, expressed in terms of percentages of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. The offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 43 U.S.C. 1626:
- B. Subcontracts awarded to an ANC or Indian tribe shall be counted towards the subcontracting goals for small business and small disadvantaged business (SDB) concerns, regardless of the size or Small Business Administration certification status of the ANC or Indian tribe.
- C. Where one or more subcontractors are in the subcontract tier between the prime contractor and the ANC or Indian tribe, the ANC or Indian tribe shall designate the appropriate contractor(s) to count the subcontract towards its small business and small disadvantaged business subcontracting goals.
- D. In most cases, the appropriate Contractor is the Contractor that awarded the subcontract to the ANC or Indian tribe.
- E. If the ANC or Indian tribe designates more than one Contractor to count the subcontract toward its goals, the ANC or Indian tribe shall designate only a portion of the total subcontract award to each Contractor. The sum of the amounts designated to various Contractors cannot exceed the total value of the subcontract.
- F. The ANC or Indian tribe shall give a copy of the written designation to the Contracting Officer, the prime Contractor, and the subcontractors in between the prime Contractor and the ANC or Indian tribe within 30 days of the date of the subcontract award.
- G. If the Contracting Officer does not receive a copy of the ANC's or the Indian tribe's written designation within 30 days of the subcontract award, the Contractor that awarded the subcontract to the ANC or Indian tribe will be considered the designated Contractor.

A statement of:

- A. Total dollars planned to be subcontracted for an individual contract plan; or the offerors total projected sales, expressed in dollars, and the total value of projected subcontracts to support the sales for a commercial plan;



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- B. Total dollars planned to be subcontracted to small business concerns (including ANC and Indian tribes);
- C. Total dollars planned to be subcontracted to veteran-owned small business concerns;
- D. Total dollars planned to be subcontracted to service-disabled veteran-owned small business;
- E. Total dollars planned to be subcontracted to HUBZone small business concerns;
- F. Total dollars planned to be subcontracted to small disadvantaged business concerns (including ANCs and Indian tribes); and
- G. Total dollars planned to be subcontracted to women-owned small business concerns.

A description of the principal types of supplies and services to be subcontracted, and an identification of the types planned for subcontracting to:

- A. Small business concerns,
- B. Veteran-owned small business concerns;
- C. Service-disabled veteran-owned small business concerns;
- D. HUBZone small business concerns
- E. Small disadvantaged business concerns, and
- F. Women-owned small business concerns.

A description of the method used to develop the subcontracting goals in paragraph (d)(1) of this clause.

A description of the method used to identify potential sources for solicitation purposes (*e.g.*, existing company source lists, the Central Contractor Registration database (CCR), veterans service organizations, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, HUBZone, small disadvantaged, and women-owned small business trade associations). A firm may rely on the information contained in CCR as an accurate representation of a concern's size and ownership characteristics for the purposes of maintaining a small, veteran-owned small, service-disabled veteran-owned small, HUBZone small, small disadvantaged, and women-owned small business source list. Use of CCR as its source list does not relieve a firm of its responsibilities (*e.g.*, outreach, assistance, counseling, or publicizing subcontracting opportunities) in this clause.

A statement as to whether or not the offeror included indirect costs in establishing subcontracting goals, and a description of the method used to determine the proportionate share of indirect costs to be incurred with:

- A. Small business concerns (including ANC and Indian tribes);





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- B. Veteran-owned small business concerns;
- C. Service-disabled veteran-owned small business concerns;
- D. HUBZone small business concerns;
- E. Small disadvantaged business concerns (including ANC and Indian tribes); and
- F. Women-owned small business concerns.

The name of the individual employed by the offeror who will administer the offeror's subcontracting program, and a description of the duties of the individual.

A description of the efforts the offeror will make to assure that small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns have an equitable opportunity to compete for subcontracts.

Assurances that the offeror will include the clause of this contract entitled "Utilization of Small Business Concerns" in all subcontracts that offer further subcontracting opportunities, and that the offeror will require all subcontractors (except small business concerns) that receive subcontracts in excess of \$550,000 (\$1,000,000 for construction of any public facility with further subcontracting possibilities) to adopt a plan similar to the plan that complies with the requirements of this clause.

Assurances that the offeror will:

- A. Cooperate in any studies or surveys as may be required;
- B. Submit periodic reports so that the Government can determine the extent of compliance by the offeror with the subcontracting plan;
- C. Submit the Individual Subcontracting Report (ISR) and/or the Summary Subcontract Report (SSR), in accordance with the paragraph (I) of this clause using the Electronic Subcontracting Reporting System (eSRS) at <http://esrs.gov>. The reports shall provide information on subcontract awards to small business concerns, veteran-owned small business concerns, service-disabled veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, women-owned small business concerns, and Historically Black Colleges and Universities and Minority Institutions. Reporting shall be in accordance with this clause, or as provided in agency regulations;
- D. Ensure that its subcontractors with subcontracting plans agree to submit the ISR and/or the SSR using eSRS;
- E. Provide its prime contract number, its DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to all first-tier subcontractors with subcontracting plans so they can enter this information into the eSRS when submitting their reports; and





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- F. Require that each subcontractor with a subcontracting plan provide the prime contract number, its own DUNS number, and the e-mail address of the Government or Contractor official responsible for acknowledging or rejecting the reports, to its subcontractors with subcontracting plans.

A description of the types of records that will be maintained concerning procedures that have been adopted to comply with the requirements and goals in the plan, including establishing source lists; and a description of the offeror's efforts to locate small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns and award subcontracts to them. The records shall include at least the following (on a plant-wide or company-wide basis, unless otherwise indicated):

- A. Source lists (*e.g.*, CCR), guides, and other data that identify small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns.
- B. Organizations contacted in an attempt to locate sources that are small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, or women-owned small business concerns.
- C. Records on each subcontract solicitation resulting in an award of more than \$100,000, indicating:
  - 1. Whether small business concerns were solicited and if not, why not;
  - 2. Whether veteran-owned small business concerns were solicited and, if not, why not;
  - 3. Whether service-disabled veteran-owned small business concerns were solicited and, if not, why not;
  - 4. Whether HUBZone small business concerns were solicited and, if not, why not;
  - 5. Whether small disadvantaged business concerns were solicited and if not, why not;
  - 6. Whether women-owned small business concerns were solicited and if not, why not; and
  - 7. If applicable, the reason award was not made to a small business concern.

Records of any outreach efforts to contact:

- A. Trade associations;
- B. Business development organizations;



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- C. Conferences and trade fairs to locate small, HUBZone small, small disadvantaged, and women-owned small business sources; and
- D. Veterans service organizations.
- E. Records of internal guidance and encouragement provided to buyers through --
  - 1. Workshops, seminars, training, etc., and
  - 2. Monitoring performance to evaluate compliance with the program's requirements.
  - 3. On a contract-by-contract basis, records to support award data submitted by the offeror to the Government, including the name, address, and business size of each subcontractor. Contractors having commercial plans need not comply with this requirement.

In order to effectively implement this plan to the extent consistent with efficient contract performance, the Contractor shall perform the following functions:

- A. Assist small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns by arranging solicitations, time for the preparation of bids, quantities, specifications, and delivery schedules so as to facilitate the participation by such concerns. Where the Contractor's lists of potential small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business subcontractors are excessively long, reasonable effort shall be made to give all such small business concerns an opportunity to compete over a period of time.
- B. Provide adequate and timely consideration of the potentialities of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns in all "make-or-buy" decisions.
- C. Counsel and discuss subcontracting opportunities with representatives of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business firms.
- D. Confirm that a subcontractor representing itself as a HUBZone small business concern is identified as a certified HUBZone small business concern by accessing the Central Contractor Registration (CCR) database or by contacting SBA.
- E. Provide notice to subcontractors concerning penalties and remedies for misrepresentations of business status as small, veteran-owned small business, HUBZone small, small disadvantaged or women-owned small business for the purpose of obtaining a subcontract that is to be included as part or all of a goal contained in the Contractor's subcontracting plan.



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A master plan on a plant or division-wide basis that contains all the elements required by paragraph (d) of this clause, except goals, may be incorporated by reference as a part of the subcontracting plan required of the offeror by this clause; provided --

- A. The master plan has been approved;
- B. The offeror ensures that the master plan is updated as necessary and provides copies of the approved master plan, including evidence of its approval, to the Contracting Officer; and
- C. Goals and any deviations from the master plan deemed necessary by the Contracting Officer to satisfy the requirements of this contract are set forth in the individual subcontracting plan.

A commercial plan is the preferred type of subcontracting plan for contractors furnishing commercial items. The commercial plan shall relate to the offeror's planned subcontracting generally, for both commercial and Government business, rather than solely to the Government contract. Once the Contractor's commercial plan has been approved, the Government will not require another subcontracting plan from the same Contractor while the plan remains in effect, as long as the product or service being provided by the Contractor continues to meet the definition of a commercial item. A contractor with a commercial plan shall comply with the reporting requirements stated in paragraph (d)(10) of this clause by submitting one SSR in eSRS for all contracts covered by its commercial plan. This report shall be acknowledged or rejected in eSRS by the Contracting Officer who approved the plan. This report shall be submitted within 30 days after the end of the Government's fiscal year.

Prior compliance of the offeror with other such subcontracting plans under previous contracts will be considered by the Contracting Officer in determining the responsibility of the offeror for award of the contract.

A contract may have no more than one plan. When a modification meets the criteria in 19.702 for a plan, or an option is exercised, the goals associated with the modification or option shall be added to those in the existing subcontract plan.

Subcontracting plans are not required from subcontractors when the prime contract contains the clause at 52.212-5, Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items, or when the subcontractor provides a commercial item subject to the clause at 52.244-6, Subcontracts for Commercial Items, under a prime contract.

The failure of the Contractor or subcontractor to comply in good faith with—

- A. The clause of this contract entitled "Utilization Of Small Business Concerns;" or
- B. An approved plan required by this clause, shall be a material breach of the contract.

The Contractor shall submit ISRs and SSRs using the web-based eSRS at <http://www.esrs.gov>. Purchases from a corporation, company, or subdivision that is an affiliate of the prime Contractor or subcontractor are not included in these reports. Subcontract award data reported by prime Contractors and subcontractors shall be limited to awards made to their immediate next-tier subcontractors. Credit cannot be taken for awards made to lower tier subcontractors unless the



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Contractor or subcontractor has been designated to receive a small business or small disadvantaged business credit from an ANC or Indian tribe.

- A. ISR. This report is not required for commercial plans. The report is required for each contract containing an individual subcontract plan and shall be submitted to the Administrative Contracting Officer (ACO) or Contracting Officer, if no ACO is assigned.
- B. The report shall be submitted semi-annually during contract performance for the periods ending March 31 and September 30. A report is also required for each contract within 30 days of contract completion. Reports are due 30 days after the close of each reporting period, unless otherwise directed by the Contracting Officer. Reports are required when due, regardless of whether there has been any subcontracting activity since the inception of the contract or the previous reporting period.
- C. When a subcontracting plan contains separate goals for the basic contract and each option, as prescribed by FAR 19.704(c), the dollar goal inserted on this report shall be the sum of the base period through the current option; for example, for a report submitted after the second option is exercised, the dollar goal would be the sum of the goals for the basic contract, the first option, and the second option.
- D. The authority to acknowledge receipt or reject the ISR resides—
  1. In the case of the prime Contractor, with the Contracting Officer; and
  2. In the case of a subcontract with a subcontracting plan, with the entity that awarded the subcontract.SSR.
  3. Reports submitted under individual contract plans:
    - This report encompasses all subcontracting under prime contracts and subcontracts with the awarding agency, regardless of the dollar value of the subcontracts.
    - The report may be submitted on a corporate, company or subdivision (*e.g.* plant or division operating as a separate profit center) basis, unless otherwise directed by the agency.
    - If a prime Contractor and/or subcontractor is performing work for more than one executive agency, a separate report shall be submitted to each executive agency covering only that agency's contracts, provided at least one of that agency's contracts is over \$550,000 (over \$1,000,000 for construction of a public facility) and contains a subcontracting plan. For DOD, a consolidated report shall be submitted for all contracts awarded by military departments/agencies and/or subcontracts awarded by DOD prime Contractors. However, for construction and related maintenance and repair, a separate report shall be submitted for each DOD component.



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- For DOD and NASA, the report shall be submitted semi-annually for the six months ending March 31 and the twelve months ending September 30. For civilian agencies, except NASA, it shall be submitted annually for the twelve month period ending September 30. Reports are due 30 days after the close of each reporting period.
- Subcontract awards that are related to work for more than one executive agency shall be appropriately allocated.
- The authority to acknowledge or reject SSRs in eSRS, including SSRs submitted by subcontractors with subcontracting plans, resides with the Government agency awarding the prime contracts.

Reports submitted under a commercial plan—

- A. The report shall include all subcontract awards under the commercial plan in effect during the Government's fiscal year.
- B. The report shall be submitted annually, within thirty days after the end of the Government's fiscal year.
- C. If a Contractor has a commercial plan and is performing work for more than one executive agency, the Contractor shall specify the percentage of dollars attributable to each agency from which contracts for commercial items were received.
- D. The authority to acknowledge or reject SSRs for commercial plans resides with the Contracting Officer who approved the commercial plan.

All reports submitted at the close of each fiscal year (both individual and commercial plans) shall include a Year-End Supplementary Report for Small Disadvantaged Businesses. The report shall include subcontract awards, in whole dollars, to small disadvantaged business concerns by North American Industry Classification System (NAICS) Industry Subsector. If the data are not available when the year-end SSR is submitted, the prime Contractor and/or subcontractor shall submit the Year-End Supplementary Report for Small Disadvantaged Businesses within 90 days of submitting the year-end SSR. For a commercial plan, the Contractor may obtain from each of its subcontractors a predominant NAICS Industry Subsector and report all awards to that subcontractor under its predominant NAICS Industry Subsector.

(End of Clause)

*Alternate I (Oct 2001).* When contracting by sealed bidding rather than by negotiation, substitute the following paragraph (c) for paragraph (c) of the basic clause:

The apparent low bidder, upon request by the Contracting Officer, shall submit a subcontracting plan, where applicable, that separately addresses subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns. If the bidder is submitting an individual contract plan, the plan must separately address subcontracting with small business, veteran-owned small business, service-disabled veteran-owned small business,



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HUBZone small business, small disadvantaged business, and women-owned small business concerns, with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be submitted within the time specified by the Contracting Officer. Failure to submit the subcontracting plan shall make the bidder ineligible for the award of a contract.

### **LIQUIDATED DAMAGES -- SUBCONTRACTING PLAN (JAN 1999)**

- A. Failure to make a good faith effort to comply with the subcontracting plan,” as used in this clause, means a willful or intentional failure to perform in accordance with the requirements of the subcontracting plan approved under the clause in this contract entitled “Small Business Subcontracting Plan,” or willful or intentional action to frustrate the plan.
- B. Performance shall be measured by applying the percentage goals to the total actual subcontracting dollars or, if a commercial plan is involved, to the pro rata share of actual subcontracting dollars attributable to Government contracts covered by the commercial plan. If, at contract completion, or in the case of a commercial product plan, at the close of the fiscal year for which the plan is applicable, the Contractor has failed to meet its subcontracting goals and the Contracting Officer decides in accordance with paragraph (c) of this clause that the Contractor failed to make a good faith effort to comply with its subcontracting plan, established in accordance with the clause in this contract entitled “Small Business Subcontracting Plan,” the Contractor shall pay the Government liquidated damages in an amount stated. The amount of probable damages attributable to the Contractor’s failure to comply shall be an amount equal to the actual dollar amount by which the Contractor failed to achieve each subcontract goal.
- C. Before the Contracting Officer makes a final decision that the Contractor has failed to make such good faith effort, the Contracting Officer shall give the Contractor written notice specifying the failure and permitting the Contractor to demonstrate what good faith efforts have been made and to discuss the matter. Failure to respond to the notice may be taken as an admission that no valid explanation exists. If, after consideration of all the pertinent data, the Contracting Officer finds that the Contractor failed to make a good faith effort to comply with the subcontracting plan, the Contracting Officer shall issue a final decision to that effect and require that the Contractor pay the Government liquidated damages as provided in paragraph (b) of this clause.
- D. With respect to commercial plans, the Contracting Officer who approved the plan will perform the functions of the Contracting Officer under this clause on behalf of all agencies with contracts covered by the commercial plan.
- E. The Contractor shall have the right of appeal, under the clause in this contract entitled “Disputes,” from any final decision of the Contracting Officer.
- F. Liquidated damages shall be in addition to any other remedies that the Government may have.